

loop that failed. If the request fails the "loop qualification" check, the loop would not support the SBC LEC-deployed ADSL. The SBC LECs recognize, however, that other carriers may be able to provide ADSL on that loop and it will be provided at the carrier's option. Under those circumstances, the SBC LEC cannot guarantee, represent, or warrant the adequacy of that loop for use with ADSL, and the SBC LEC would disclaim any responsibility for the use of that loop for other than voice-grade traffic.

Loops are checked and qualified on a "first asked, first qualified" basis as between the SBC LEC and other carrier -- which, given that the presence of ADSL on a loop may disqualify other loops in the same cable, demonstrates the SBC LECs' solid commitment to non-discriminatory treatment.

The SBC LECs are also instituting an ordering process to ensure equivalent access to loop qualification. A request for retail ADSL service will go to a DSL service center; a request for an unbundled ADSL-capable loop will go through the standard UNE ordering process. In each instance, every request will be subject to the above-described same loop qualification process administered by the same group with the same results regardless of the source of the loop request.

B. The SBC LECs Provide Collocation for ADSL Equipment

The SBC LECs will continue to observe their obligations to provide physical and virtual collocation for the ADSL equipment used by other carriers, whether those obligations arise under the 1996 Act, Commission's rules or orders, interconnection agreements, or arbitration results. In fact,

as other carriers have acknowledged, Pacific Bell already provides collocation for ADSL equipment and obviously has done in advance its own provision of ADSL service. Those practices will continue unaffected by any retail ADSL offering by an SBC LEC.

C. ISP Bundling of ADSL

ADSL services provide the ADSL customer with high-speed data connectivity between the end-user and the serving SBC LEC's fast-packet network. Once virtually connected to the fast-packet network, the ADSL customer has the ability to establish a permanent virtual connection to any data service provider connected to that SBC LEC's fast-packet network. The SBC LECs fully expect ISPs, after obtaining access to SBC's fast-packet network, to purchase ADSL service and combine it with their Internet service in order to provide end-users a "packaged" high-speed Internet offering.

VI. THE SBC LECs' PLANNED ENTRY INTO THE HIGH-SPEED DATA MARKET

The SBC LECs plan to begin deploying ADSL in the very near future. Indeed, Pacific Bell has announced its intention to equip eighty-seven (87) central offices with ADSL over the next few months.¹⁸ Those central offices currently serve over 200 California communities and approximately 4.4 million households and 650,000 business customers. SWBT also expects to follow shortly with a deployment announcement of its own.

¹⁸ See May 27, 1998, News Release found at "<http://www.sbc.com/News/current.html>".

The ADSL service offering will be targeted at end-users that access the Internet and work-at-home applications that access corporate LANs. Inasmuch as Internet traffic is predominantly interstate in nature,¹⁹ the SBC LECs will file interstate tariffs to offer ADSL service.

VII. THE REQUESTED RELIEF WOULD BE IN THE "PUBLIC INTEREST" AND MEET THE OTHER APPLICABLE STANDARDS FOR RELIEF

The SBC LECs are seeking relief under two separate statutes -- section 10 and section 706 -- of which has its own standard for relief. Section 706 is simple and straightforward:

The Commission . . . *shall encourage* the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

Section 10 *requires* the FCC to "forbear from applying any regulation or provision of this Act to telecommunications carrier or telecommunications services" if the Commission determines that

- (i) enforcement is "not necessary to ensure that the charges, practices, classifications, and regulations" by a carrier are "just and reasonable and are not unjustly or unreasonably discriminatory";
- (ii) continued enforcement is not necessary for the protection of consumers; and
- (iii) such forbearance is consistent with the public interest.

As is amply demonstrated below, each request for relief from regulation meets the applicable standard, and should be expeditiously granted.

¹⁹ See, e.g., March 25, 1998, *ex parte* letter from Paul L. Cooper, SBC Communications Inc., to Magalie R. Salas, FCC, in CC Docket Nos. 80-286, 96-45, 96-262, 97-30.

A. Section 706 Confers Independent Forbearance Authority Wholly Separate from Section 10

Although there can be no dispute that the FCC is authorized by section 10 to provide relief from dominant treatment of ADSL services, the conclusion that section 706 acts as an independent authority not subject to the limitation on section 10²⁰ has been challenged by competitors of those carriers subject to sections 251(c) and 271. That matter has been fully debated and briefed in the already pending section 706 petitions. *See* note 3 *supra*. The SBC LECs strongly believe that the two sections textually demonstrate their independence, and that only by treating them as separate grants of authority can the FCC avoid ignoring statutory language, statutory redundancy, or reaching an absurd result.²¹

By making them independent, Congress thus established two avenues to regulatory relief that are not mutually exclusive, but whose applications could overlap. Thus, for example, even if the Commission determined that section 10 was unavailable because the carrier had not met the one of the first two subsections of section 10(a), the section 706 authority would still permit the relief to be granted if its standard were met.

²⁰ The breadth of that authority is limited by 47 U.S.C. § 160(d), which prohibits forbearance from section 251(c) or 271 until those provisions are fully implemented. Section 706 does not contain any similar restriction. The FCC's dominant regulation of Company and its interstate services is notably not dependent upon either of those two provisions.

²¹ *See* "Consolidated Reply Comments of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell," CC Docket Nos. 98-11, 98-26, and 98-32, pp. 4-7, filed May 6, 1998. A copy of that pleading is attached as Attachment 2 and incorporated herein.

The SBC LECs urge the Commission to quickly resolve this dispute by giving the language of section 706 its plain meaning, and concluding that it acts as an independent grant of authority.

B. Granting the Relief Requested Would Clearly be “in the Public Interest”

The “public interest” standard is embedded in both section 10 and section 706.²² In section 10, the “public interest” is only one of three criteria to be applied. In section 706, however, the “public interest” is *the* standard. The “public interest” inquiry generally provides the Commission with discretion to consider a broad range of factors relevant to achieving the “purposes of the

²² The fact that “public interest” tests are worded differently provides no basis for arguing the two are different legal standards. Neither the Commission nor the court have differentiated between the various formulation of the “public interest” test. *See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, CC Docket No. 97-137, 12 FCC Rcd 20543, ¶ 384 n.989 (1997) (various statutory “public interest” formulations referred to as “consistent with the public interest, convenience, and necessity”); *Consolidated Application of American Telephone and Telegraph Company and Specified Bell System Companies for Authorization Under Sections 214 and 310(d) of the Communications Act of 1934 for Transfers of Interstate Lines, Assignments of Radio Licenses, Transfers of Control of Corporations Holding Radio Licenses and Other Transactions as Described in the Application*, 96 F.C.C. 2d 18, ¶ 66 n.73 (1983) (“neither the courts nor this Commission appear to have placed any significance upon the different [public interest] language [in 47 U.S.C. §§ 214, 310(d)] and many cases use the terminology interchangeably”); Office of Communication of the United Church of Christ v. FCC, 826 F.2d 101, 106 (D.C. Cir. 1987) (the Court equates various formulations of “public interest” standard).

regulatory legislation.”²³ In the context of the purposes behind section 10 and section 706, the relief requested would clearly be in the public interest.

C. Relief from Any Unbundling Obligation, Any Wholesale Discount Obligation, and Dominant Treatment of ADSL Would be in the “Public Interest” Under Section 706

Unlike many other statutory provisions, the purpose of section 706 is succinctly embedded in the provision itself -- “to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.” The Senate history on section 304 of S.652, the precursor to section 706 that had no counterpart in the House Bill, only serves to reinforce that strong message.

Section 304 of the bill is *intended to ensure* that one of the primary objectives of the bill -- to accelerate deployment of advanced telecommunications capability -- is achieved. . . . The Committee believes that this provision is *a necessary failsafe* to ensure that the bill will achieve its intended infrastructure objective.²⁴

²³ See NAACP v. FPC, 425 U.S. 662, 669 (1976) (“the use of the words ‘public interest’ in a regulatory statute . . . take meaning from the purposes of the regulatory legislation”); New York Central Sec. Corp. v. United States, 287 U.S. 12, 25 (1932) (“the term ‘public interest’ as thus used [in a statute] is not a concept without ascertainable criteria”); Business Roundtable v. SEC, 905 F.2d 406, 413 (D.C. Cir. 1990) (“broad ‘public interest’ mandates must be limited to ‘the purposes Congress had in mind when it enacted [the] legislation’” (quoting NAACP v. FPC, 425 U.S. at 670)); National Broadcasting Co., Inc. v. United States, 319 U.S. 190, 216 (1943) (the “[public interest] requirement is to be interpreted by its context”).

²⁴ S. Rep. No. 104-23, 104th Cong., 1st Sess. 50 (emphasis added). The Conference Committee Report noted that “[t]he conference agreement adopted the Senate provision with a modification.” H. R. Rep. No. 104-458, 104th Cong., 2d Sess. 210 (1996).

Thus, if any of the requested relief for ADSL meets the "public interest" standard, Congress has directed the Commission to "encourage" its deployment by granting that relief.

Assuming that ADSL is subject to unbundling²⁵ and wholesale discounts²⁶ under section 251(c) and applicable Commission rules, the SBC LECs seek regulatory relief from those obligations. The "public interest" in eliminating the disincentives to innovate and invest that result from the unbundling and resale obligations have been clearly and accurately described by Bell Atlantic, Ameritech, U S WEST, and APT.²⁷ The Commission has previously noted its understanding of the effect. Responding to assertions that the incentives for developing innovative new services would be substantially harmed if an overly broad interpretation of the unbundling obligation were adopted, the Commission acknowledged "that prohibiting incumbents from refusing access to proprietary [network] elements could reduce their incentives to offer innovative services."²⁸

²⁵ U S WEST has raised the issue of whether the facilities to deploy high-speed data services like ADSL are subject to the unbundling obligation. See CC Docket No. 98-26, U S WEST's "Petition for Relief," pp. 44-51 (filed February 25, 1998) ("U S WEST Petition"). In addition, the technical feasibility of unbundling the current generation of DSLAMs is not clear and has yet to be fully explored.

²⁶ See *GTE Telephone Operating Companies Tariff* FCC No. 1, Transmittal No. 1148, GTE's Reply, filed on May 28, 1998, pp. 22-23. ("GTE Reply")

²⁷ See CC Docket No. 98-11, "Petition of Bell Atlantic," p. 3; U S WEST Petition, p. 44-52; CC Docket No. 98-32, "Petition of Ameritech Corporation," p. 23, 24; "Petition of the Alliance for Public Technology," pp. 15-27.

²⁸ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 282 (1996), *vacated in part on other grounds*, Iowa Utilities Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), *amended on reh'g*, 1997 U.S. App. LEXIS 28652 (October 14, 1997), *cert. granted sub noms.* 66 U.S.L.W. 3490 (1998).

The unbundling requirement in particular creates a very real barrier to innovation and investment because an incumbent LEC bears all of the risks and burdens of associated with the investment and deployment but few of the benefits. As explained earlier,²⁹ a carrier seeking unbundling of a successful innovation and investment can take exclusive control of that investment and pay no more than a cost-based rate plus a possible reasonable profit. 47 U.S.C. § 252(d)(1). At the same time, unsuccessful innovations and investments are borne solely by the incumbent LEC. The result is a skewed, inequitable structure of risks and rewards. By re-balancing that structure for ADSL through section 706, more innovation and investment would be encouraged.

Moreover, granting the SBC LECs relief from any unbundling and wholesale discount obligations would also serve the public interest and the objective of section 706 by incenting *other carriers* to make investments in ADSL technology. ADSL investments and deployment by other carriers have already occurred where the SBC LECs have not provided ADSL. That independent investment in advanced telecommunications capability will continue if carriers cannot obtain ADSL capabilities from the SBC LECs. Indeed, if the SBC LECs had provided ADSL first and been required to unbundle and provide a wholesale discount, that investment might not have been made at all or at the same level. By providing relief from any unbundling and wholesale discount obligations, the FCC can ensure that such infrastructure investment by other carriers wanting to offer ADSL will continue. In fact, such relief may even provide an additional incentive to other carriers to deploy their own outside plant, which the Commission has recognized as one of the principal goals

²⁹ See RM 9244 (CCB/CPD 98-15), "Comments of Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell," filed April 13, 1998.

of the 1996 Act. Carriers that would otherwise rely on the SBC LECs' ADSL investment and service offerings (and thus limit their operations to the geographic scope of the SBC LECs' deployment) will garner more experience with the ADSL technology and the ADSL market. That knowledge earned by those activities can only serve to reduce the risk of making ADSL deployment decisions for other areas, and thereby help increase the likelihood of more widespread deployment by other carriers.

D. Relief for ADSL Service from Dominant Treatment is in the "Public Interest" Under Section 10

As a dominant carrier and without regulatory relief, the SBC LECs' ADSL service will be subject to dominant treatment. The SBC LECs are seeking section 10 forbearance of dominant treatment for ADSL service, specifically including, without limitation, dominant tariffing requirements (including the need to provide cost studies on a more frequent basis than required from a nondominant carrier) and dominant pricing constraints.³⁰ In essence, the SBC LECs seek to offer ADSL and operate with respect thereto like the non-regulated providers and nondominant carriers that are the SBC LECs' competitors in this high-speed data market. The public interest would be served by permitting the SBC LECs that flexibility.

The purpose of section 10 is relatively clear -- to eliminate regulation and its negative aspect (e.g., added costs, slower innovation, less responsiveness to market) where the reason for regulation

³⁰ By asking for section 10 forbearance instead of reclassification as non-dominant with respect to ADSL service, none of the SBC LECs are conceding that it has any market power in the provision of ADSL services.

does not exist. In the instant context, using the historical regulatory paradigm with ADSL is simply not needed. Actual and potential competition for retail high-speed data services with which the SBC LECs' ADSL service will compete clearly undercuts the policy basis for regulation. The public interest would concomitantly be served by the more robust competition that will ensue, and the regulatory costs that will be foregone, if regulation is equalized.

Forbearing from the requested aspects of dominant regulation cannot help but have a positive impact on the level of competition in the high-speed data market, with consumers enjoying the benefits that flow from that heightened competition. As the Commission has very recently observed with respect to dominant regulation in particular,

We have recognized that aspects of dominant carrier regulation may hinder competition under current market conditions if applied to a carrier that no longer possesses market power. . . Long tariff notice periods enable non-dominant competitors, who are required to file tariffs on one-day's notice or not at all, to undercut a dominant carrier's filed rate or be first to market with a creative service offering even before a dominant carrier's tariff becomes effective. This adversely affects competitive rivalry in a market because the bidding for significant business customers is a major competitive stimulus in any market.³¹

³¹ *Comsat Corporation; Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier; Policies and Rules for Alternative Incentive Based Regulation of Comsat Corporation; Comsat Corporation; Petition for Partial Relief From the Current Regulatory Treatment of Comsat World Systems' Video and Audio Services; Comsat Corporation; Petition for Partial Relief From the Current Regulatory Treatment of Comsat World Systems' Switched Voice, Private-Line, and Video and Audio Services; PANAMSAT Corporation; Petition to Reopen Changes in the Corporate Structure and Operations of the Communications Satellite Corporation; File No. 60-SAT-ISP-97; IB Docket No. 98-60; File No. 14-SAT-ISP-97; RM-7913; CC Docket No. 80-634, Order and Notice of Proposed Rulemaking, FCC 98-78, ¶ 66 (April 28, 1998) (footnotes omitted) ("Comsat Order").*

By relieving the SBC LECs from the tariff filing requirements of section 203 and Parts 61 and 69 (but still allow permissible tariffing filings), the FCC can eliminate that negative effect of dominant regulation -- an inability to modify its ADSL services offering quickly and without telegraphing its actions in advance to its competitors who can then undercut the offer to the public before it is even made. The relief will help achieve the full "competitive rivalry" that can only benefit the public. As Congress expressly recognized in section 10(b), promoting competition among providers of telecommunications services is of itself a sufficient basis for concluding that forbearance is in the public interest.

At the same time, the SBC LECs can avoid the costs of regulation that they as dominant carriers must bear, but that their competitors do not. Eliminating those costs will eliminate the need for the SBC LECs to recover them through their ADSL prices, thus helping to keep their ADSL prices lower and more affordable for consumers, and their service more competitive.

Thus, for the reasons stated above as well as the reasons set forth in the 706 "public interest" discussion, the public interest would be served by forbearing from the application of section 203 and Parts 61 and 69 with respect to the SBC LECs' ADSL service.

E. Relief from Dominant Regulation for ADSL Meets the Other Section 10 Standards

In addition to the "public interest" standard set forth in section 10(a)(3), a request for section 10 forbearance must also meet the standards of section 10(a)(1) and (a)(2). Because of competition

in the market for high-speed data services, those standards are met and section 10 forbearance must be granted in accordance with the statute.

1. Enforcement of Dominant Treatment is Not Necessary to Ensure Charges and Practices Are Just, Reasonable, and Not Unreasonably Discriminatory

The high-speed data competitors of the SBC LECs will ensure that their prices and practices remain just, reasonable, and not unreasonably discriminatory. In many areas, the relevant SBC LEC will be faced with at least one actual competitor that will be seeking to undercut the ADSL service, and can be expected to do so using its own service availability, transmission speeds and operating parameters, customer service, and price.

Moreover, the threat of potential competition -- whether in addition to actual competition or otherwise -- will also ensure that an SBC LEC's charges and practices remain just, reasonable, and not unreasonably discriminatory. With cable television passing approximately 97% of television households,³² the SBC LECs will be under constant threat of cable modem competition from an entrenched cable television provider. With unbundled loops available and collocation being provided, carriers that will be able to deploy ADSL or other competing data services will be present on a widespread, if not ubiquitous, basis.

In short, the effect of actual and potential competition -- both ever increasing -- will fulfill the role of regulation. The SBC LECs have to make sure that the terms and conditions (including price) of its ADSL service meets the needs of consumers, or else suffer the wrath of sophisticated

³² See National Cable Television Association at "<http://www.ncta.com/history.html>."

consumers who have real and expanding alternatives for high-speed data services. Under the circumstances, the continued application of 47 C.F.R. Parts 61 and 69 are not necessary ensure that the SBC LECs' rates, charges, and practices are just and reasonable, and not unreasonably discriminatory.

2. Enforcement of Dominant Treatment is Not Necessary For the Protection of Consumers

Consumer protection concerns also do not justify the continued application of section 203 and Parts 61 and 69. With service alternatives, consumers will be able to simply move to another high-speed data provider if they become dissatisfied with the ADSL service provided by an SBC LEC, whether as a result of price, customer service, or otherwise. "[M]arket forces, together with the complaint process, will adequately protect consumers."³³ Indeed, as the Commission reiterated in the recent Comsat Order, regulation in the presence of competition only serves to harm consumers, not protect them.

In the alternative, if the FCC does not conclude that the SBC LECs' request meets the section 10 requirements, the SBC LEC's request relief from Parts 61 and 69 under section 706 and its "public interest" standard for the reasons set forth above.

³³ *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, ¶ 38 (1996).

F. Ancillary Limited Relief from the MFN Obligation Also Meet the Standards for Relief

In order to implement fully the relief granted herein and avoid that relief being frustrated and of limited effectiveness, the FCC should also grant forbearance of the "most favored nation" obligation of 47 U.S.C. § 252(i) to the extent that it might apply to any agreement to provide "interconnection, service, or network element" which is inconsistent with the relief provided pursuant to this Petition. If ADSL services are provided at a wholesale discount and ADSL facilities unbundled prior to the relief from any such obligations, the SBC LECs are concerned that the MFN obligation could be used by carriers to avoid the FCC's order, and to deny the SBC LECs the associated forbearance. The SBC LECs would honor effective arrangements existing at the time of the release of the FCC's decision until their expiration, by grandfathering such inconsistent agreements to the then-existing party-carriers thereto and to the then-existing inconsistent arrangements.

Inasmuch as this forbearance request is predicated on forbearance relief that have been determined by the Commission to meet the section 706 or section 10 standards, as the case may be, this implementation issue associated with such relief also meets those standards. Especially in light of the prospective effect only, the same affirmative "public interest" and other conclusions reached are equally applicable and indistinguishable.

Such limited forbearance would also be consistent with the Congressional policy embedded in section 10(e), where Congress made sure that FCC decisions to forbear were honored by State

commissions in the exercise of their authority and responsibilities. The Commission should adopt a similar policy here, and provide similar relief.

G. The SBC LECs Can Help Make ADSL Available to Schools, Libraries, and Unserved and Underserved Customers

As a telecommunications service, ADSL will be eligible for discounts under the FCC's school/library fund. The relief sought with this Petition will help incent more widespread deployment of ADSL, so that more schools and libraries will be able to include ADSL in their technology plans and discount requests. The SBC LECs will work with schools and libraries to help with that process and to ensure that the benefits of more affordable bandwidth are made available as an option.

The SBC LECs are also interested in providing ADSL in areas not already served by existing ADSL providers. To that end, Pacific Bell added five central offices in unserved/underserved areas to its summer 1998 deployment plans. Those five offices are in the intercity of Los Angeles, and border neighborhoods south of San Diego near Mexico. Pacific Bell thus has again demonstrated its historic practice of serving diverse market segments. That learning experience will be used in developing further ADSL deployment and marketing plans aimed at the successful adoption and use of the technology within all segments. The SBC LECs expect that experience to confirm what is already suspected -- that high-speed data service can benefit a diverse cross-section of consumers -- and to help the SBC LECs figure out how best to deliver ADSL service to "all Americans." Pacific Bell and the other SBC LECs certainly believe they could do more in other intercity and rural

locations if there is a proper balance of incentives, risk, and possible reward that can be created with the forbearance sought in this Petition.

VIII. THE SBC LECs PROPOSE TO USE THE ACCOUNTING SAFEGUARDS USED FOR NONREGULATED OFFERINGS

Another concern expressed in relation to section 706 and ADSL is that incumbent LECs might be able to cross-subsidize services like ADSL with other revenues. To address that issue, the SBC LECs propose to use the Part 64 accounting methods for nonregulated offerings to record the investment, expenses, and revenues associated with ADSL infrastructure and investment.³⁴ Adopted in CC Docket No. 86-111,³⁵ the goal of Part 64 was to "develop a system of accounting separation that would inhibit carriers from imposing on ratepayers for regulated interstate services the costs and risks of nonregulated ventures."³⁶ The SBC LECs propose to apply the principles and requirements of Docket No. 86-111 and Part 64, including the Cost Allocation Manual ("CAM") and its review and audit process, to address any cross-subsidy concern. The CAM process is the method by which

³⁴ Although the SBC LECs do not believe this step is appropriate or necessary given that the ADSL is a telecommunications service and the FCC's price cap regulation eliminates the ability to cross-subsidize ADSL service by raising the prices of the other access services, the SBC LECs are willing to accept such accounting treatment on an interim basis.

³⁵ *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities; Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and Their Affiliates*, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298 (1987).

³⁶ *Id.*, ¶ 1.

the FCC ensures that the ratepayers are not paying or bearing the risks of nonregulated ventures, by ensuring the allocation or charging of operating company accounts including revenues, investment overheads, and taxes. There is no reason to believe that Part 64 and the SBC LECs' CAMs³⁷ cannot eliminate the cross-subsidy concern especially in view of recent adoptions of its use by the Commission.³⁸

IX. CONCLUSION

For premises considered, the FCC should promptly grant this Petition and provide forbearance from the following regulatory obligations, to the extent applicable, subject to the

³⁷ If new activities are undertaken by the operating company that are not covered by current rules, then revisions are made to the CAM and filed with the FCC to accommodate these new or changed activities. These revisions and their implementation are included in the annual attestation audit.

³⁸ See, e.g., *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539, ¶¶ 73-75 (1996).

safeguards proposed herein:

- Any unbundling obligation applicable to ADSL facilities;
- Any obligation to provide a wholesale discount on ADSL services;
- Dominant treatment of ADSL service; and
- Any MFN obligation as applicable to inconsistent agreements as specified herein.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY
PACIFIC BELL
NEVADA BELL

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June 9, 1998

CERTIFICATE OF SERVICE

I, Mary Ann Morris, hereby certify that the foregoing, APETITION OF SOUTHWESTERN BELL TELEPHONE COMPANY, PACIFIC BELL, AND NEVADA BELL FOR RELIEF FROM REGUALTION,≡ In the Matter of Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service has been filed this 9th day of June, 1998 to the Parties of Record.

A handwritten signature in cursive script, reading "Mary Ann Morris", is written over a horizontal line.

Mary Ann Morris

June 9, 1998

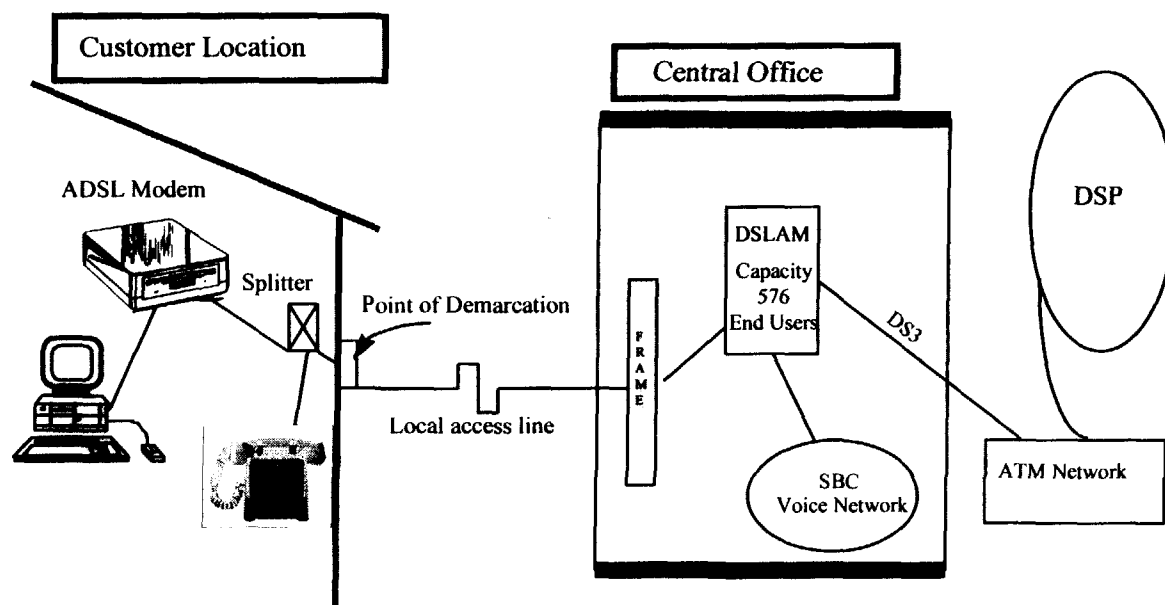
ITS INC.

1231 20TH STREET NW

GROUND FLOOR

WASHINGTON DC 20036

ADSL NETWORK ARCHITECTURE



DSP - Data Service Provider
DSLAM - Digital Subscriber Line Multiplexer

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)

Petition of Bell Atlantic Corporation)
for Relief from Barriers to Deployment)
of Advanced Telecommunications Services)

CC Docket No. 98-11

Petition of U S WEST Communications, Inc.)
for Relief from Barriers to Deployment)
of Advanced Telecommunications Services)

CC Docket No. 98-26

Petition of Ameritech Corporation)
to Remove Barriers to Investment in)
Advanced Telecommunications Capability)

CC Docket No. 98-32

**CONSOLIDATED REPLY COMMENTS OF
SBC COMMUNICATIONS INC.**

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May 6, 1998

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SUMMARY

The oppositions to the section 706 petitions filed by Bell Atlantic, U S WEST, and Ameritech engage in extreme forms of rhetoric, claiming the most dire consequences if the relief sought is granted. The FCC must see beyond the hyperbole, and individually consider each 706 petition and the relief sought.

As explained in the attached reply comments filed in RM 9244, SBC believes that section 706 confers the FCC with substantive forbearance authority that is not subject to section 10's limitations and restrictions.

The Commission's section 706 authority is not dependent upon or triggered by the first review under section 706(b). Both the structure of section 706 and its express purpose -- the reasonable and timely deployment of advanced telecommunications capability -- clearly indicate that the FCC's obligation is continuous, and not discrete to be used only at regular intervals. An interpretation that so limited the Commission's authority would also imply that States, to which section 706(b) does not apply, were intended by Congress to have a greater role in section 706. Neither the statute nor public policy supports a failure to address the petitions.

There is no distinction between advanced telecommunications capability and advanced telecommunications services. Congress and consumers want services, not infrastructure, and Commission action that provides regulatory relief for advanced telecommunications services as a means of providing incentives to deploy the infrastructure is perfectly lawful.

Although this is not the proper forum to address various complaints with the

* The abbreviations used in this Summary are as defined in the main text.

implementation of the 1996 Act, SBC responds to the various criticisms leveled at Pacific Bell by Covad even though the same matters are being addressed between the parties and before the California Public Utilities Commission.